

Extended Confiscation in Denmark

A description of the experiences we have had in
Denmark in connection with extended confiscation



Confiscating the proceeds of crime

- 1 *Why is confiscation of the proceeds of crime so important ?*
- 2 *What is extended confiscation ?*
 - a) Confiscation of proceeds of crime
 - b) Value based confiscation
 - c) Extended confiscation
 - d) Civil confiscation





3. *Extended confiscation in Denmark.*

Art. 76 a:

- (I) Total or partial confiscation of property belonging to a person found guilty of a punishable act may take place when
- 1) the act committed is of a nature which may entail a significant gain, and
 - 2) according to the law, the act committed is punishable by imprisonment of six years or more or it is a violation of the legislation on euphoriants.





- (II) Under conditions mentioned in subsection (I) above total or partial confiscation of property which the spouse or cohabitant of the offender has acquired may take place unless
- 1) the property has been acquired more than five years prior to the punishable act upon which the confiscation according to subsection (I) is based
or
 - 2) the matrimony or cohabitation was not in force at the time of acquisition.





- (III) Under conditions mentioned in subsection (I) above total or partial confiscation of property transferred to a legal person upon whom the offender alone or together with his closest relations has a decisive influence may take place. The same shall apply if the person in question received a significant part of the income of the legal person. Confiscation may not take place if the property was transferred to the legal person more than five years prior to the punishable act upon which confiscation according to subsection (I) above is based.





(IV) Confiscation according to subsection (I-III) may not take place if the offender renders probable that the property has been acquired in a legal way or with legally acquired means.

(V) In place of confiscation of certain property according to subsection (I-III) above an amount corresponding to the value of the property or a part of the value may be confiscated.





- a) Conditions for using extended confiscation
- certain crimes
 - only assets that are still in existence
 - only assets of a certain value
 - the court can always decide not to use extended confiscation





- b) Confiscation from people or legal persons close to the defendant
- wife or cohabitant
 - certain legal persons
 - confiscation from children or other relatives that are not mentioned in art. 76a.
 - more than five years ago
 - the close relationship did not exist at the time when the wife, cohabitant or legal person acquired the asset.





- c) avoiding confiscation – the reversed burden of proof.
 - If the defendant (his wife/cohabitant or the legal person) makes probable, that he has acquired the assets with money earned or acquired from legal activities.

- d) Problems connected with the rules of procedure.

